

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEELCASE INC., a Michigan
corporation,

Plaintiff,

v.

HARBIN'S, INC., an Alabama
corporation, MICHAEL G. HARBIN,
and HOPE D. HARBIN,

Defendants.

Case No. 1:04CV0026

Honorable Robert Holmes Bell
Chief, U.S. District Judge

MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT HARBIN'S, INC.

Plaintiff, Steelcase Inc., by its attorneys, Miller, Johnson, Snell & Cummiskey, P.L.C., pursuant to the provisions of Fed. R. Civ. P. 55(b)(1), moves the Court Clerk to enter judgment in favor of plaintiff Steelcase Inc. and against defendant Harbin's, Inc. in the amount of Three Hundred Eighty-Three Thousand Two Hundred Seventy-Five and 79/100 Dollars (\$383,275.79). Because the amount of the judgment is for a sum certain, together with interest which by computation may be made certain, the default judgment may be entered by the Court Clerk.

In support of the Motion, plaintiff Steelcase Inc. states as follows.

1. This action was commenced by a Complaint filed on January 14, 2004, against Harbin's, Inc.
2. Defendant Harbin's, Inc. was served on January 15, 2004, as reflected by the Return of Service on file with this Court.

3. Counsel for defendant Harbin's, Inc. entered their Appearance on February 4, 2004.

4. On February 24, 2004, defendant Harbin's, Inc. filed a Motion to Dismiss for Lack of Personal Jurisdiction and for Improper Venue Pursuant to Feb. R. Civ. P. 12(b)(2) and (3), or in the Alternative for Transfer of Venue.

5. On September 23, 2004, this Court entered its Opinion and Order denying defendant Harbin's, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue or for Transfer of Venue.

6. On October 4, 2004, plaintiff Steelcase Inc. filed an Amended Complaint adding as parties defendant Michael G. Harbin and Hope D. Harbin. Steelcase Inc.'s claim against defendant Harbin's, Inc. was unchanged by the Amended Complaint.

7. On October 13, 2004, defendant Harbin's, Inc.'s attorneys, Miller, Canfield, Paddock & Stone, P.L.C., filed a Motion for Leave to Withdraw as counsel. This Court entered an Order Granting Motion for Leave to Withdraw on October 14, 2004.

8. Pursuant to the provisions of Fed. R. Civ. P. 15(a) and other provisions of the Federal Rules regarding calculation of time, defendant Harbin's, Inc.'s answer to the Amended Complaint was due on or before October 18, 2004. No answer or other response permitted by the Federal Rules has been filed by defendant Harbin's, Inc., and plaintiff Steelcase Inc. requested the entry of default against Harbin's, Inc.

9. On October 20, 2004, the Clerk of this Court entered a default against Harbin [sic], Inc.

10. No substitute counsel has since filed an appearance on behalf of Harbin's, Inc., seeking to set aside the entry of default.

11. On November 9, 2004, individual defendant Michael Harbin, through counsel, answered the Amended Complaint, admitting that defendant Harbin's, Inc. owes Steelcase the amount claimed in the Amended Complaint, over and above all setoffs and counterclaims. (Answer of Michael Harbin, ¶ 24.) Michael Harbin is or was at the beginning of this lawsuit President of Harbin's, Inc. (Affidavit of Michael Harbin in Support of Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue, ¶ 1, on file herein.)

12. Attached to both the original Complaint in this action and to the Amended Complaint is the Affidavit of James VanDyke On Open Account, dated January 9, 2004, submitted pursuant to the provisions of Michigan statute MCL 600.2145. Mr. VanDyke's Affidavit states that as of January 9, 2004, defendant Harbin's, Inc. owed Steelcase Inc. on open account, over and above all set-offs and legal counterclaims, the principal amount of Three Hundred Forty-Five Thousand Twenty-Seven and 04/100 Dollars (\$345,027.04), together with an additional amount of Twenty-Three Thousand Two Hundred Twelve and 74/100 Dollars (\$23,212.74) for accrued interest for a total amount due as of January 9, 2004 in the amount of Three Hundred Sixty-Eight Thousand Two Hundred Thirty-Nine and 78/100 Dollars (\$368,239.78). (A copy of the original VanDyke Affidavit is attached as Exhibit A to this Motion.) Michigan law, MCL 600.2145, provides that an affidavit on open account is *prima-facie* evidence of the indebtedness unless any responsive affidavit denying the indebtedness is filed. There has been no responsive affidavit filed in this case, and as noted above, the indebtedness has been admitted by Harbin's, Inc.'s current or past President.

13. Using the Michigan statutory rate of Five Percent (5%), MCL 438.31, the amount of additional accrued interest on unpaid principal from January 9 through November 23, 2004, is Fifteen Thousand Thirty-Six and 01/100 Dollars (\$15,036.01), making the total amount of the indebtedness owed by defendant Harbin's, Inc. to Steelcase Inc. Three Hundred Eighty-Five Thousand Two Hundred Seventy-Five and 79/100 Dollars (\$385,275.79) as of November 23, 2004.

14. Steelcase Inc.'s recoverable costs in this matter are One Hundred Fifty and 00/100 Dollars (\$150.00), the amount of the filing fee.

Accordingly, plaintiff Steelcase Inc. requests that the Court Clerk enter judgment in its favor and against defendant Harbin's, Inc. in the amount of Three Hundred Eighty-Five Thousand Two Hundred Seventy-Five and 79/100 Dollars (\$385,275.79) for principal and accrued interest through the date of this Motion, together with One Hundred Fifty and 00/100 Dollars (\$150.00) for recoverable costs. A proposed form of Judgment is attached to this motion.

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys for Plaintiff, Steelcase Inc.

Dated: November 23, 2004

By \s\ Jon G. March
Jon G. March (P17065)

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JUDGMENT IN FAVOR OF STEELCASE INC.
AND AGAINST HARBIN'S, INC.

Pursuant to the provisions of Fed. R. Civ. P. 55(b)(1), and based on the pleadings and papers on file herein, judgment is hereby entered in favor of plaintiff, Steelcase Inc., and against defendant, Harbin's, Inc., in the amount of Three Hundred Eighty-Five Thousand Two Hundred Seventy-Five and 79/100 Dollars (\$385,275.79), which sum includes principal and accrued interest through November 23, 2004, and a further amount for court costs in the amount of One Hundred Fifty and 00/100 Dollars (\$150.00).

Ronald C. Weston, Sr.,
Clerk of the Court